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November 27, 1996

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Implementation of the Telecommunications Act of 1996:
Telemessaging, Electronic Publishing and Alarm
Monitoring Services
CC Docket No. 96-152

Enforcement of Section 275(a)(2) of the Telecommunications
Act of 1996 Against Ameritech Corporation, CCB Pol 96-17

Southwestern Bell Telephone Company's Comparably Efficient
Interconnection Plan for the Provision of Security Service
CC Docket Nos. 85-229, 90-623 and 95-20

Dear Mr. Caton:

The Alarm Industry Communications Committee ("AICC"), by its attorneys hereby submits the following additional information to summarize and clarify its position on a number of issues in the above-referenced proceedings.

1. Scope of the Commission's Jurisdiction

The alarm monitoring industry is composed of over 14,000 individual alarm companies, less than 50 of which provide services nationwide. The vast majority of alarm providers offer services on a regional or local basis, frequently operating entirely within a single state. As illustrated by the attached charts, alarm monitoring providers have four options for obtaining transmission capability between the customer premises and the alarm provider's central station. These four options are: (1) use of the public switched network on a per call basis, (2) use of derived local channel ("DLC") service provided by many LECs,

(3) use of multiplexed private lines, and (4) use of dedicated private lines.[1] In each case, the alarm company must rely on the LEC to provide the necessary services. Further, in each case, whether the underlying service is interstate or intrastate in nature depends upon how the LEC offers its service and where the alarm provider's central station is located. Because most alarm monitoring providers operate on a local or regional basis, "alarm monitoring services" primarily are provided on an intrastate basis, but also are provided on an interstate basis.

AICC believes Congress drafted Section 275 to take into account the way that alarm monitoring services typically are provided. Congress defined the term "alarm monitoring services" as any services performing the functions specified in Section 275(e), without limiting its definition solely to interstate services. Given that Section 275 does not limit itself to interstate services, the FCC should interpret the alarm monitoring restriction to apply to all alarm monitoring services, regardless of whether the underlying transmission services used are interstate or intrastate.

2. Section 275(a)(1)

Section 275(a)(1) bars the BOCs (other than Ameritech) from "engag[ing] in the provision of alarm monitoring services" for five years.[2] SWBT and other BOCs have urged a narrow interpretation of the word "provision" that would allow them to engage in the provisioning of alarm monitoring services so long as they do not operate an alarm central station. This interpretation is not consistent with the ordinary meaning of the term "provision" or with how other similar restrictions have been interpreted by the FCC and the courts. To the contrary, the FCC and the courts consistently have interpreted the words "provide" or "provision" in the way that AICC proposes here. That is, the "provision" of a service encompasses the marketing, sale, and related customer contact functions as well as the physical transmission function of a service. For example:

> 1. The MFJ stated that the BOCs could not "directly or through any affiliated enterprise . . . provide interexchange telecommunications services or information services." See United States v. AT&T, 552 F. Supp. 131, 227 (D.D.C. 1982). This restriction consistently was interpreted by the FCC and the MFJ Court to preclude any BOC involvement with the offering, sale,

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[1] A fifth option involves the use of radio transmission facilities between the customer premises and the alarm central station. However, most of the frequencies available for such purposes are shared frequencies which are susceptible to significant interference problems. Therefore, radio frequencies are not considered sufficiently reliable for general use by alarm monitoring providers.

[2] 47 U.S.C. § 275(a)(1).

selection or marketing of interexchange services, from "least cost routing" programs to payphone 0+ carrier selection.[3] Perhaps the Commission best summarized the restriction in its order approving the AT&T divestiture, when it stated, "After divestiture, the operating companies are forbidden from: entering the interexchange telecommunications services or information services markets . . .."[4] No BOC was permitted to market interLATA services while the MFJ restriction was in place.

2. Until its repeal earlier this year, the cable-telco cross-ownership restriction stated that a LEC could not "provide video programming directly to subscribers in its telephone service area . . .."[5] Clearly, this restriction prohibited a LEC from operating as a cable TV provider. However, even when the FCC attempted for policy reasons to allow greater LEC participation, such as with video dialtone, it interpreted Section 533 to prohibit BOC marketing activities. Thus, the Commission's video dialtone rules stated that a LEC could not engage in any activity in which it would "determine how video programming is presented for sale to subscribers in its local exchange service area . . .."[6]

3. Within the 1996 Act itself, Section 271 governs when a BOC may "provide interLATA services" yet there has been no suggestion in any of the proceedings related to this section that the BOCs could market interLATA services within their region or act as a sales agent for an interLATA carrier. Clearly, no one would interpret Section 271 to allow SWBT to market MCI's long distance service to SWBT subscribers, to act as a MCI's sales agent, to combine MCI and SWBT services in a single line item on SWBT bills, and to keep a percentage of MCI's gross revenues as compensation for such activities. Section 275 must be interpreted consistently with the language of Section 271.

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[3] See, eg., United States v. Western Elec. Co., 627 F.Supp. 1090, 1100-03 (D.D.C. 1986); United States v. Western Elec. Co., 698 F.Supp. 348, 360 (D.D.C. 1988).

[4] The Consolidated Application of American Telephone and Telegraph Company and Specified Bell System Companies for Authorization Under Sections 214 and 310(d) of the Communications Act of 1934, Memorandum Opinion, Order and Authorization, 96 F.C.C.2d 18, 23 (1983) (emphasis added).

[5] 47 U.S.C. § 533(b).

[6] 47 C.F.R. § 63.53(d)(3)-(4). See Telephone Company - Cable Television Cross-Ownership Rules, Section 63.54-63.58, further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300 (1991).

Finally, some BOCs have suggested that if the Commission interprets Section 275 to apply to BOC marketing of alarm services, then the Commission also must be prepared to regulate sales agents for cellular telephone services as cellular "providers." This argument fails for two reasons. First, the BOCs are wrong on the law, because the regulatory status of cellular sales agents does not turn upon whether they are "providers" and thus is not affected by the Commission's interpretation of the word "provision" in Section 275. Whether an entity is subject to the Commission's regulation turns on whether it meets the definition of "common carrier" under Section 153(h) and whether it is "engage[d] in transmission over or by means of [wire or radio]" as defined in Section 214 of the Act.[7] Second, the BOCs also are wrong factually, because the activities of cellular sales agents are different from that which SWBT contends is permissible under Section 275. Entities selling cellular telephones deal with a customer only at the initial point of purchase of the telephone, and fully disclose that the activation and cellular service must be obtained from the cellular carrier. By contrast, SWBT has proposed an extensive and ongoing relationship with the subscriber, including initial point of sale, customer service, billing and revenue sharing involvement by the BOC. SWBT would not simply sell equipment to the subscriber and then hand the customer relationship over to an alarm monitoring service provider, as a cellular sales agent does.

3. Section 275(a)(2)

Section 275(a)(2) governs the activities of Ameritech, which is the only BOC that was providing alarm monitoring services at the time specified in the Act. Ameritech has taken the position that it may, consistent with this section, purchase alarm monitoring contracts and other assets of unaffiliated alarm monitoring providers. The question before the Commission is whether by doing so Ameritech would "acquire any equity interest in or obtain financial control of, any unaffiliated alarm monitoring service entity," as prohibited by Section 275(a)(2).

"Financial control" is a broad concept, which "encompasses 'every form of control, actual or legal, direct or indirect, negative or affirmative.'"[8] Because financial control often is fact-specific, the Commission should take the same approach that it has taken in radio licensing matters regarding issues of control. It should employ a concept of financial control that is flexible enough to accomplish Congress' purposes in limiting Ameritech's ability to acquire unaffiliated alarm monitoring entities. This can be accomplished by adopting a

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[7] 47 U.S.C. §§ 153(h), 214(a).

[8] See AICC Comments at 25 (quoting Sewell, Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934, 43 Fed. Comm. Law J. 277, 295 (1991)).

conclusion here that "financial control" of an "entity" may be obtained either through a purchase of the stock of an unaffiliated alarm monitoring entity, or through the acquisition of alarm monitoring contracts or other assets of an unaffiliated corporation, subsidiary, or division engaged in the provision of alarm monitoring services.

For example, if Ameritech purchases all of the alarm monitoring assets of an otherwise independent operating entity, it obtains the right to dictate the future provision of alarm monitoring services to the entity's customers just as if it had taken control of the entity itself. Purchase of all of an alarm provider's assets -- as Ameritech did with Circuit City -- gives Ameritech financial control over the previously-independent alarm monitoring entity.

The same reasoning holds true if Ameritech purchases selected contracts and assets, for Ameritech would exercise de facto control over the entity's future provision of alarm monitoring services.[9] Any other interpretation renders superfluous the "exchange of customers" language of Section 275(a)(2). That is, the limitation on Ameritech's activities must be read in tandem with the single exception to the limitation that Congress delineated. Ameritech is permitted only to "exchange" customer accounts; if it could purchase them outright, rather than exchange them, then the exchange language is meaningless. Accordingly, the Commission should interpret financial control to be obtained by any purchase of customer accounts, whether they are all or only a part of the alarm monitoring entity's assets.

In short, the Commission should avoid any interpretation of Section 275 that merely dictates the form of Ameritech's acquisitions, but ignores their effect. The only interpretation that is consistent with a common sense reading of the statute is that Ameritech is permitted to grow its alarm monitoring business through its own sales efforts, but prohibited from growing through the acquisition of the stock or assets (including customer contracts) of an unaffiliated alarm monitoring entity.

Sincerely,

Danny E. Adams

Danny E. Adams

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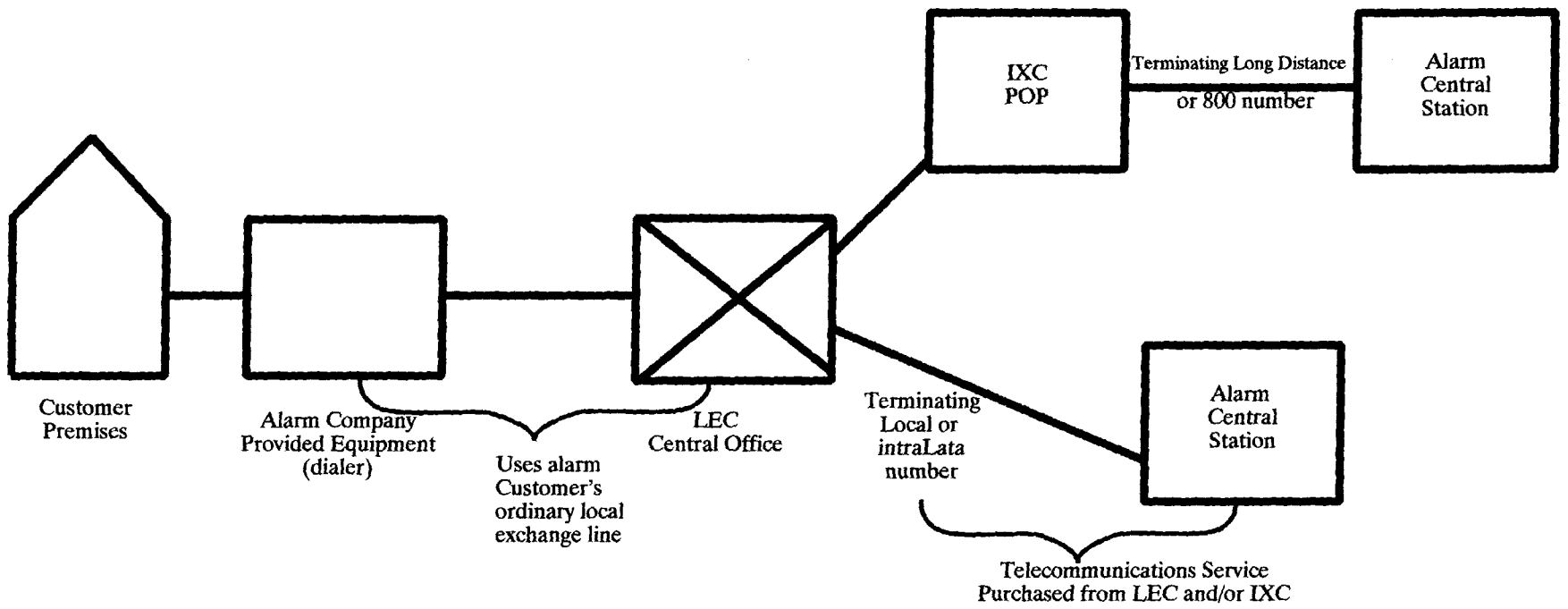
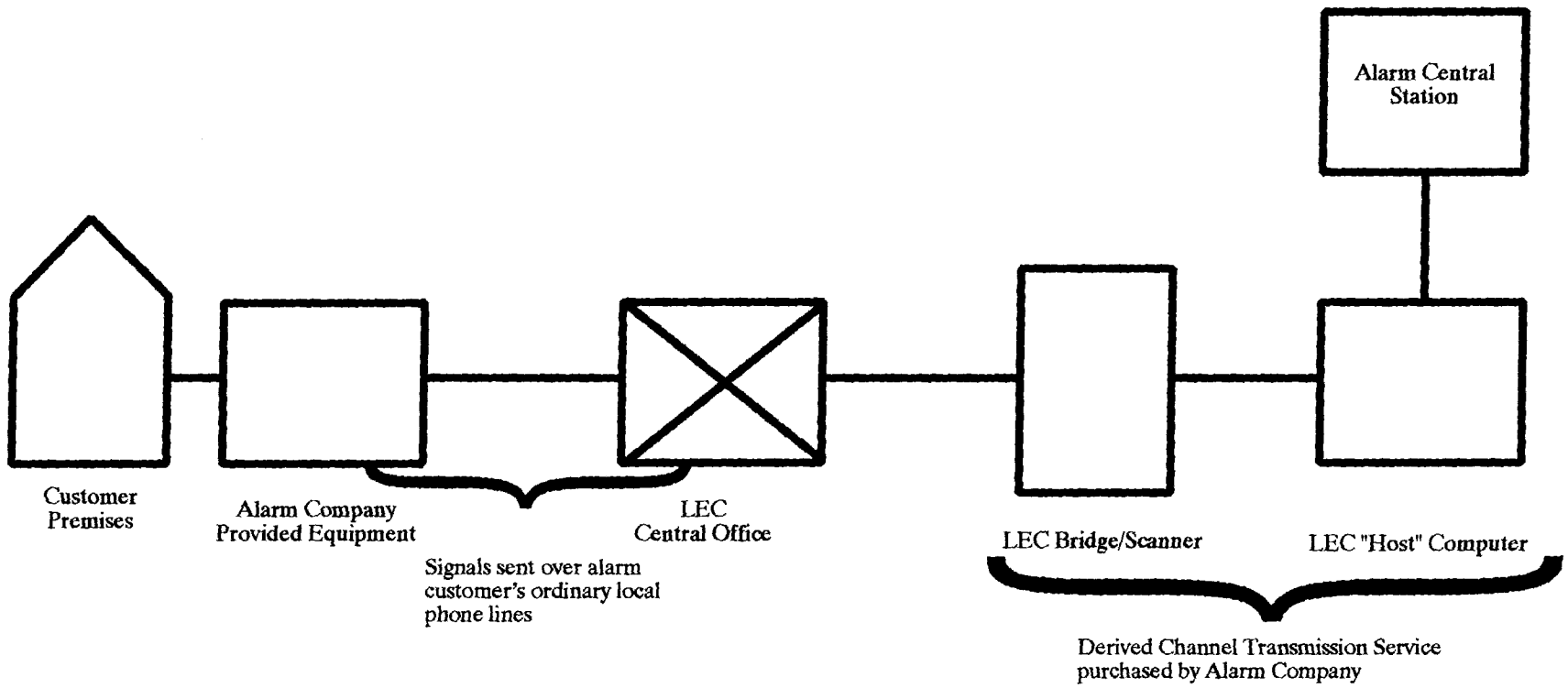
[9] In most cases, an alarm monitoring provider would purchase selected assets (such as specific branches of an entity) in order to take over the operations of the entity in a particular geographic area, be it a state, a city, or other discrete territory. Thus, if Ameritech purchases selected assets, it would in all likelihood obtain control of the alarm monitoring "entity" that operated within a particular geographic area.

Option A
Public Switched Network



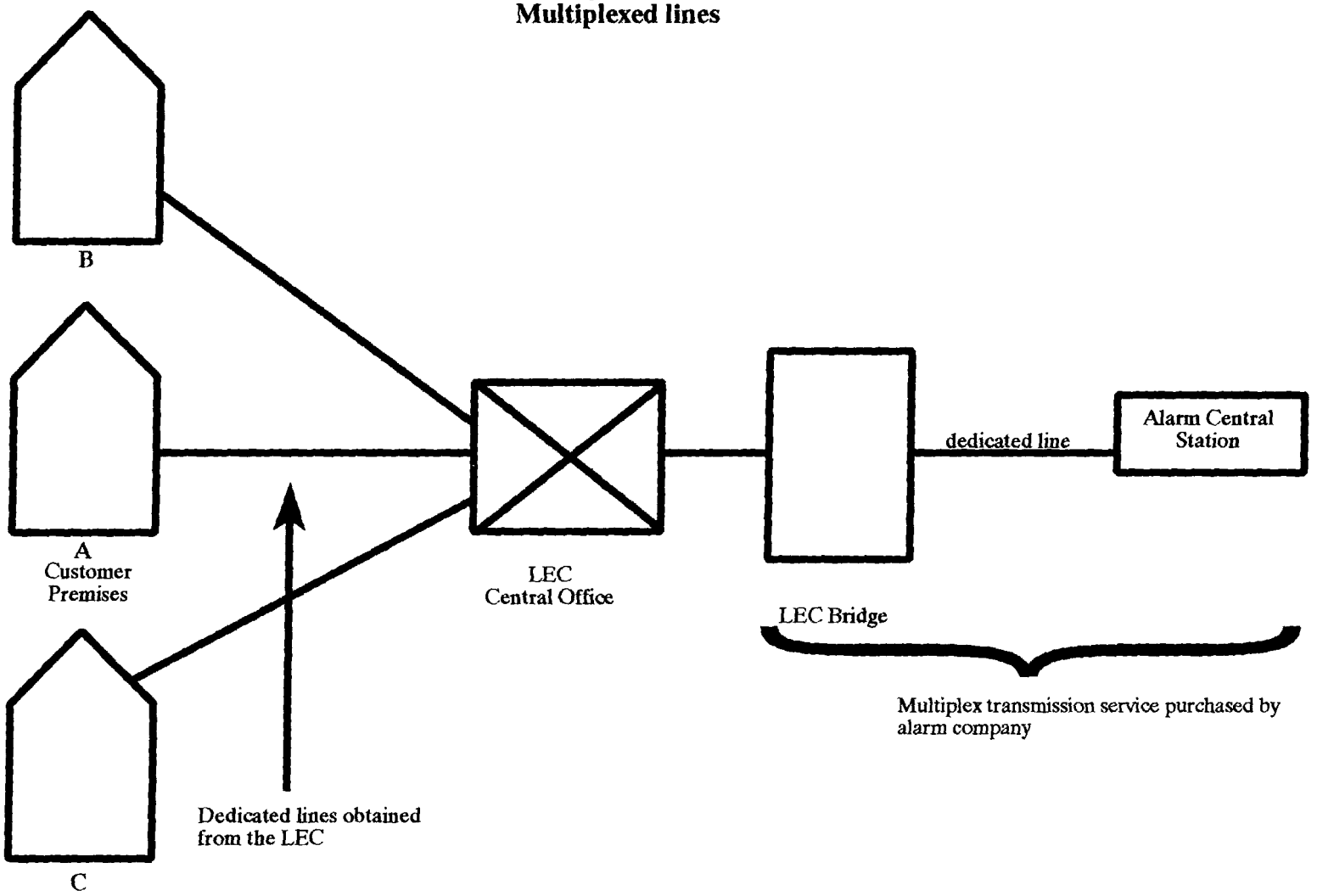
Note: By far, the most common installation method used today (95-97% of locations). Depends upon the integrity of LEC service; on-site equipment must be re-programed for each change in local calling protocols, area code changes, etc.

Option B
Derived Local Channel System



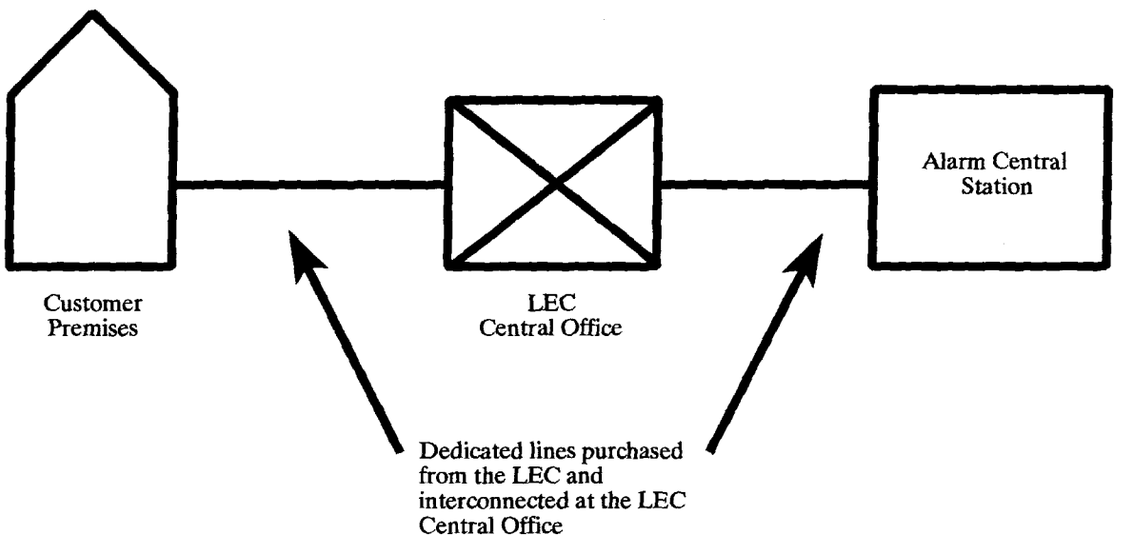
Note: All seven BOCs offer this service under various trademarks (Scan Alert, Versanet, Watchnet, etc.).

Option C
Multiplexed lines



Note: Alarm Company Central Station must be located in the same area code as the customer premises. More common in the 1970's than today.

Option D
Dedicated Facilities/Private Lines



Note: More expensive than other options; used primarily for high-risk premises.